

# NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON

In Re:

HEALTH LINK,

Debtor(s).

No. 98-06581-W1R

SACRED HEART MEDICAL CENTER,

Plaintiff,

vs.

AETNA U.S. HEALTHCARE OF  
WASHINGTON, INC.,

Defendant(s).

Adv. No. A01-00109-W1R

ST. JOSEPH CARE CENTER,

Plaintiff,

vs.

HEALTH NET, INC.,

Defendant(s).

Adv. No. A01-00117-W1R

SACRED HEART MEDICAL CENTER,

Plaintiff,

vs.

HEALTH NET, INC., et al.,

Defendant(s).

Adv. No. A01-00118-W1R

**FILED**

NOV 21 2001

ENTERED

11/21/01

T.S. MCGREGOR, CLERK  
U.S. BANKRUPTCY COURT

SACRED HEART MEDICAL CENTER,  
Plaintiff,  
vs.  
PACIFICARE OF WASHINGTON, INC.,  
Defendant.

Adv. No. A01-00121-W1R

ST. JOSEPH CARE CENTER,  
Plaintiff,  
vs.  
PACIFICARE OF WASHINGTON, INC.  
Defendant.

Adv. No. A01-00122-W1R

MEMORANDUM DECISION RE:  
PLAINTIFFS' MOTIONS FOR  
ABSTENTION AND REMAND

THIS MATTER came on for hearing before the Honorable Patricia C. Williams on October 15, 2001 upon Plaintiffs' Motions for Abstention and Remand. Plaintiffs were represented by Gerald Kobluk; Defendant Aetna U.S. Healthcare of Washington was represented by John Campbell; Defendant Health Net, Inc. and Molina Healthcare of Washington, Inc. were represented by Stevan Phillips; and defendant Pacificare of Washington, Inc. was represented by Edward Johnson. The Court reviewed the files and records herein, heard argument of counsel and was fully advised in the premises. The court now enters its Memorandum Decision.

**FACTS**

Requests for remand to the state court have been made by the plaintiffs in these five adversary proceedings which relate to the three jointly administered bankruptcy proceedings of the related entities collectively referred to as Health Link. The debtor's primary business

1 was to contract with health insurance companies and health maintenance  
2 organizations (HMO). By the terms of those contracts, and there are  
3 disputes as to whether certain contracts even existed, the health care  
4 providers would submit billings for medical services to the insured or  
5 member of the HMO to Health Link. The debtor would process the billing  
6 and pay the medical service provider on behalf of the health insurance  
7 company or HMO. The contracts had varying provisions regarding the  
8 reimbursement of the debtor by the health insurance company or HMO.  
9 These plaintiffs are health care providers who did not receive payment  
10 from Health Link for services provided to insureds or members of HMOs.  
11 The plaintiffs brought suit against the insurance company or HMO in  
12 state court seeking payment. A more detailed analysis of the factual  
13 background and business milieu which gave rise to these five adversaries  
14 appears in this court's prior decision entered July 11, 2001 in *Empire*  
15 *Health Services v. Aetna U.S. Healthcare of Washington, Inc.*, A01-00027  
16 and *Empire Health Services v. State of Washington*, A01-00028  
17 (hereinafter referred to as the "Prior Decision").

18 Although this situation involves five adversary proceedings, there  
19 are only two plaintiffs. The plaintiff in adversary No. 01-00118-W1R is  
20 Sacred Heart Medical Center, a medical care provider. In state court,  
21 it sued Health Net, Inc., a successor-in-interest of QualMed Washington  
22 Health Plan, Inc., a health insurance company, to whose insureds the  
23 plaintiff provided medical services. Health Link failed to pay the  
24 plaintiff for those medical services and the plaintiff now seeks to  
25 directly recover from the health insurance company. Sacred Heart  
26 Medical Center is also the plaintiff in adversary No. 01-00121-W1R. It

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28 MEMORANDUM DECISION RE: . . . - 3

1 brought suit against Pacificare of Washington, Inc. on the same basis.  
2 Sacred Heart Medial Center is also the plaintiff in adversary No. 01-  
3 000109-W1R and, again on the same basis, brought suit against Aetna U.S.  
4 Healthcare of Washington, Inc., a successor-of-interest to NYL Care  
5 Health Plans Northwest, Inc.

6 The plaintiff in adversary No. 01-00117-W1R is St. Joseph Care  
7 Center, a medical care provider. It also brought suit against Health  
8 Net, Inc., as successor-in-interest of QualMed Washington Health Plan,  
9 Inc., to whose insureds the plaintiff provided medical services. Health  
10 Link failed to pay the plaintiff for those medical services and the  
11 plaintiff now seeks to directly recover from the health insurance  
12 company. In adversary No. 01-00122-W1R, St. Joseph Care Center brought  
13 suit against Pacificare of Washington, Inc. on the same basis.

14 Although the contracts between the various defendants (or their  
15 predecessors) and Health Link varied and the course of dealing between  
16 the plaintiffs and Health Link varied, the essential dispute is that  
17 each plaintiff provided medical services, each defendant paid sums to  
18 Health Link to pay for those services and as Health Link failed to pay  
19 the plaintiffs for the services, each defendant should do so. These  
20 five adversary proceedings were originally commenced in state court on  
21 April 30, 2001 and were removed to this court between May 23, 2001 and  
22 June 4, 2001.

23 **Was Removal Proper Under 28 U.S.C. § 1334(b) and 1452(a)?**

24 If the outcome of these adversaries could conceivably affect the  
25 bankruptcy estate, "related to" jurisdiction exists under 28 U.S.C.  
26 § 1334(b). "Related to" jurisdiction is very broad and even includes  
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1 matters only indirectly related to the bankruptcy proceedings or the  
2 bankruptcy estate. *In re ACI-HDT Supply Co.*, 205 B.R. 231, 237 (B.A.P.  
3 9<sup>th</sup> Cir. 1997). The question of whether "related to" jurisdiction exists  
4 is to be determined at the time of the removal. *Sparta Surgical Corp. v.*  
5 *National Ass'n of Securities Dealers, Inc.*, 159 F.3d 1209 (9<sup>th</sup> Cir. 1998)  
6 and *In re Carraher*, 971 F.2d 327 (9<sup>th</sup> Cir. 1992). For the reasons set  
7 forth in the Prior Decision, "related to" jurisdiction existed at the  
8 time of the removal which occurred between May 23, 2001 and June 4,  
9 2001. The removal of the five state court cases was proper and the  
10 question then becomes whether this court should exercise its discretion  
11 and remand the cases back to the state court.

12 **Should the Cases Be Remanded Under 28 U.S.C. § 1452(b)?**

13 Application of the factors to determine whether equitable remand is  
14 appropriate is to be made at the time the decision to remand is  
15 considered, not at the time the case is removed. Even though the  
16 underlying bankruptcy proceeding is dismissed and there is then no  
17 bankruptcy estate to which the suit may "relate", the Bankruptcy Court  
18 may continue to have jurisdiction. Dismissal of the underlying  
19 bankruptcy proceeding is one example of the many types of events or  
20 changes in circumstances which may occur between removal and the  
21 decision to remand. *In re Smith*, 866 F.2d 576, 580 (3d Cir. Pa. 1989).

22 The court must apply the same equitable remand factors as applied  
23 in the Prior Decision to determine whether it is in the best interest of  
24 justice to retain or remand these five adversary proceedings. The  
25 factual and legal issues presented by these adversaries only slightly  
26 differ from those previously presented. There are, however, some  
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1 circumstances which have changed since the Prior Decision.<sup>1</sup> The key  
2 distinction between the current application of factors and that which  
3 occurred in the Prior Decision is that now neither the plaintiffs nor  
4 the defendants in these five adversaries may bring claims against the  
5 estate due to the existence of settlement agreements.

6 Between the entry of the Prior Decision and consideration of this  
7 request to remand, significant events have occurred in the underlying  
8 bankruptcy proceeding and the numerous related adversaries. As was the  
9 situation at the time of the Prior Decision, a settlement was reached in  
10 Case No. CS-99-140-FVS pending in federal district court. The  
11 settlement is among the Health Link Chapter 7 Trustee and various  
12 parties including these defendants, Pacificare of Washington, Inc. and  
13 Aetna U.S. Healthcare of Washington, Inc. (through its predecessor-in-  
14 interest NYL Care). That settlement has now been implemented. The  
15 defendants in these adversary proceedings have released all claims  
16 against the bankruptcy estate and significant sums were paid to the  
17 bankruptcy estate as a result of the settlement. At this time, the  
18 defendants in these five adversary proceedings, even if the plaintiffs  
19 prevail against them in these adversary proceedings, have no recourse  
20 against the bankruptcy estate.

21 More importantly, since the Prior Decision, a settlement has been  
22 reached among the bankruptcy Chapter 7 Trustee and various medical care  
23 providers. These plaintiffs, St. Joseph Care Center and Sacred Heart  
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25 <sup>1</sup>At least one plaintiff in these adversaries has indicated that a  
26 jury demand will be made. Since the complaints contain both legal and  
27 equitable causes of action, it is premature to determine whether a  
jury would be required.

1 Medical Center, are parties to the settlement and have released all  
2 claims against the estate. That settlement was approved on  
3 September 20, 2001. At the time of the Prior Decision, the adversary  
4 proceeding No. A00-00244-W1R filed by the Trustee seeking to recover  
5 preference payments from Sacred Heart Medical Center, a plaintiff in  
6 three of these adversaries, had been filed. That adversary remains open  
7 pending resolution of claims against the remaining defendants. That  
8 adversary No. A00-00244-W1R was one of approximately 350 adversary  
9 proceedings in which the Chapter 7 Trustee sought recovery of  
10 preferences. Since the Prior Decision, a settlement plan has been  
11 mediated pursuant to which many of the adversaries have been settled and  
12 dismissed. Implementation of that plan continues. It is unknown  
13 whether settlement of adversary No. 00-00244-W1R will result from the  
14 mediated settlement plan, but the likelihood of a settlement of that  
15 voidable preference adversary and indeed, in any of the adversaries, has  
16 been greatly increased.

17 At this time, the likelihood of any conceivable impact on the  
18 bankruptcy estate from a final resolution of these adversaries appears  
19 de minimis. Regardless of the outcome of these plaintiffs' claims  
20 against these defendants, neither these plaintiffs or these defendants  
21 may bring a claim against the estate under the settlement agreements and  
22 releases. The complicated picture of the disputes and issues involving  
23 the Health Link estate has simplified since the Prior Decision and these  
24 particular entities have removed many of their overlapping claims and  
25 counterclaims from the picture. Records and information held by the  
26 estate will certainly be relevant to the resolution of the disputes, but  
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1 nothing in the Code protects bankruptcy estates or debtors from their  
2 obligations to appear as witnesses in proceedings between other parties  
3 which have no claims against the debtor or estate.

4 CONCLUSION

5 Therefore, this court determines that application of the equitable  
6 factors of remand under the current circumstances requires these five  
7 cases to be remanded to the state court for determination of the issues  
8 between the plaintiffs and the defendants. Orders will be entered to  
9 this effect.

10 The Clerk of Court is directed to file this Memorandum Decision and  
11 provide copies to counsel.

12 DATED this 21<sup>st</sup> day of November, 2001.

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15 PATRICIA C. WILLIAMS, Bankruptcy Judge  
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# CERTIFICATE OF SERVICE

Ca Kobler  
J Campbell  
S Phillips  
E Johnson

NOV 21 2001

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Date